

CIVIL REVISION APPLICATION No 723 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? Yes.
 2. To be referred to the Reporter or not? - :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? -
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? -
 5. Whether it is to be circulated to the Civil Judge? : NO
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STATE OF GUJARAT

Versus

DHRUVAPRASAD JITENDRAPRASAD BUCH

Appearance:

MR SUDHANSHU S PATEL, AGP for Petitioners
MR RV SAMPAT for Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 11/04/2000

ORAL JUDGEMENT

Heard learned counsel for the parties.

2. This revision application has been preferred against the judgment and order dated 3-1-1998 passed by the District Judge, Junagadh in Civil Misc. Appeal No. 27/97.

3. The plaintiff - respondent filed Civil Suit No. 789/84 for declaration and permanent injunction before the trial Court wherein the judgment and decree was delivered by the Court. The petitioner applied for the certified copy of the judgment and decree on 8-11-1996. The certified copy of the judgment and decree was ready for delivery on 9-12-1996. Therefore, the appeal was required to be filed within limitation on or before 9-1-1997. But the appeal being Civil Misc. Appeal No. 27/97 was filed on 24-2-1997 along with the application exh. 7 for condonation of delay caused in filing the said appeal. The District Judge, Junagadh dismissed the application exh. 7 vide his order dated 3-11-1998 on the ground that there was no sufficient cause to condone delay. Learned District Judge, Junagadh while dismissing the application exh. 7 relied on the full Bench decision of this Court in the case of Municipal Corporation of Ahmedabad V/s. Voltas Limited and etc. wherein this Court has observed that mere plea that delay was due to administrative reasons, cannot by itself establish sufficient cause - Precise factual reasons for the delay must be established to the satisfaction of the Court. It appears that the learned District Judge, Junagadh came to the conclusion keeping in mind the observations made by the full Bench of this Court in the aforesaid decision. If we look into the said application exh. 7 it is clear that it is a very short application and no grounds for condonation of delay are shown. The only ground is mentioned regarding administrative ground. The learned District Judge, Junagadh has discussed that the learned Judge delivered the judgment on 8-11-1996 and the certified copy was ready on 9-12-1996 and sanction was given on 11-2-1997 by the legal department. The period from 28-11-1996 when the certified copies were sent to the Legal Department till 11th of February, 1997 what were the reasons with the State for not filing an appeal within time, are not mentioned. That though the letter was received on 18-2-1997 in the office of the District Government Pleader. But the appeal was filed on 24-2-1997. No explanation came before the Court as to why the appeal was not filed immediately after receiving the sanction on 11-2-1997 and why the appeal was filed on 24-2-1997. Regarding the delay, the learned District Judge, Junagadh has observed that merely because the applicant is a State and they have to fulfill certain formalities, but in absence of explanation of delay and

in absence of showing any sufficient cause for each day, straightway the ground described as on administrative ground, cannot be accepted. The District Judge has further observed that the applicant State was silent about the fact as to when the certified copies were sent after they were ready. The applicant State is also silent on the point as to when the decision was actually taken by the Legal Department. The Government was very well knowing that the period of limitation will expire on 9-1-1997, inspite of that, under what circumstances the Legal Department has not sent the sanction upto 11-2-1997 and the office of the Government Pleader has also not mentioned any reason and/or mentioned any facts as to under what circumstances even after receiving the sanction on 18-2-1997 why they could not file an appeal upto 24-2-1997. The delay occurred due to the procedure in taking decision as to filing an appeal. The reason cannot by itself be accepted as "sufficient cause" within the scope and meaning of Section 5 of the Limitation Act.

4. Learned State Counsel contended that the State has given the explanation for condonation of delay in filing the appeal. He has mentioned those circumstances in the appeal and those circumstances are sufficient cause for condonation of delay in filing the appeal. It is mentioned in the application itself that the petitioner had applied for certified copy on 8-11-1996 on which the judgment was pronounced and the certified copy was ready on 9-12-1996 and the appeal was filed beyond 46 days. Under Rule 131 of the Law Officers' Rules, the Government Pleader is required to send the papers along with the certified copy of the judgment as well as the report to the Legal Department and the Government sent those papers along with report dated 28-11-1996 to the Legal Department. After the receipt of copies those papers along with the report the department concerned directed the Office of the District Government Pleader to file the appeal against the impugned judgment and order and accordingly the appeal was filed on 24-2-1996. Learned counsel for the petitioner contended that whenever any decision is taken by the Government Pleader to file an appeal, a note is prepared by the concerned District Government Pleader and that note is placed before the District Government Pleader. After approval of the District Government Pleader, it is sent to the Legal Department and it is received by some Superintendent of the Office. After getting the some report of the Law Officer that opinion of the District Government Pleader is placed before the Deputy Legal Secretary or before the concerned Additional Secretary. After sanction of the Legal Secretary, it is sent back to

the office of the District Government Pleader for passing through one table to another table. In the present case, the Legal Department sent the information by the letter dated 11-2-1997 to the Office of the District Government Pleader, Junagadh directing him to file the appeal against the judgment and decree of the trial Court before the District Judge, Junagadh. That letter was received in the District Government Pleader's office, Junagadh on 18-2-1997. Learned State Counsel also pointed out that it may be that the envelope received from the Legal Department was placed before the District Government Pleader on 19-2-1997. The matter might have been given to any Additional or Assistant Government Pleader for drafting and preparing the appeal memo and necessary other papers. Then the papers of the appeal as well as the application exh. 5 were prepared within two days i.e. on 20th or 21st of February, 1997. 22nd and 23rd of February, 1997 were non-working days and hence the appeal as well as the application u/s 5 of the Limitation Act were filed on 24-2-1997 and that administrative ground is obvious which cannot be misunderstood in any other circumstances. This matter has to be considered by several officers and the matter has to be put up from one table to another and that process takes some time. It may be that some delivery time might have taken place in placing the papers from one table to another. Hence, this administrative ground is a sufficient cause for condoning delay. Learned Assistant Government Pleader has relied on the decision of the Apex Court in the case of The Special Tahsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma, wherein it has been held as under :

"It is now settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day today delay. The transaction of the business of the Government being done leisurely by officers who had no or evince no personal interest at different levels. No one takes personal responsibility in processing the matters expeditiously. As a fact of several stages, they take their own time to reach a decision. Even in spite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances. It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the Court and in the matters of Limitation Act made no distinction between the State and the citizen. Nonetheless adoption of strict standard of proof leads to

grave miscarriage of public justice. It would result in public mischief by skilful management of delay in the process of filing the appeal. The approach of the Court would be pragmatic but not pedantic. Under those circumstances, the Subordinate Judge has rightly adopted correct approach and had condoned the delay without insisting upon explaining every day's delay in filing the review application in light of the law laid down by this Court."

5. On the contrary, learned counsel for the respondent submitted that the Courts below were fully justified in rejecting the application for condonation of delay in filing the appeal. As the learned State Counsel has mentioned no ground except the administrative ground and that is not sufficient in the eye of law. He has relied on the decision of the full Bench of this Court in the case of Municipal Corporation of Ahmedabad through the Municipal Commissioner Vs. Voltas Ltd. and etc. etc. reported in 1995 (1) G.L.H. 549, wherein it has been held that mere plea that delay was due to administrative cause cannot be itself establish sufficient case. Precise factual reasons for the delay must be established to the satisfaction of the Court. In the present case, no reasons have been given by the petitioner before the District Judge, Junagadh for condoning the delay in filing the appeal. As such, the application u/s 5 of the Limitation Act moved by the petitioner was rightly dismissed by the lower appellate Court. He relied on the decision of the Apex Court in the case of P.K. Ramchandran Vs. State of Kerala and another, reported in AIR 1998 SC 2276, wherein it has been held that High Court does not appear to have examined the reply filed the appellant as reference to the same is conspicuous by its absence from the order. Any explanation, much less a reasonable or satisfactory one had been offered by the respondent - State for condonation of inordinate delay of 565 days. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. Thus, the Court has not recorded any finding that the explanation for delay was either reasonable or satisfactory. The facts of this case and the facts of the case cited above are totally different. In that case, there was of delay of 565 days. While, in the present case delay is only of 46 days. It appears

that the Supreme Court had not found any reasons of satisfactory explanation with regard to cause of delay. In the present case, cause of delay given by the trial Court was not found satisfactory.

6. Another decision of this Court in the case of Patel Natvarlal Khodidas Vs. State of Gujarat reported in 1999 (2) G.L.R. 1340, has been cited by the learned counsel for the State - petitioner in support of his argument that if the State Government fails to explain day today delay then the application u/s 5 of the Limitation Act is liable to be dismissed. The facts of the case cited by the learned counsel for the respondent are different. The State's appeal was dismissed and the petitioner of that case had filed the application seeking condonation of delay in the light of the principle laid down in the certain decisions. The applicants had the certified copies of the impugned award with them since July 1996. The very fact that they had entered appearance in response to notice in the State appeals and the State Appeal were dismissed, it cannot be said that they had no opportunity to file cross-objections. Even if it is assumed in their favour that they could not file the cross-objections because the State appeals were dismissed and finally decided on the same day. But the fact remains that they opposed the State appeals in response to the notice issued by the Court and were on watching the State appeal proceedings since August 1996 to February, 1998 without mentioning to the Court that they themselves intended to file appeal or cross-objections if State appeals are admitted. The State appeals were dismissed on the same day when they were admitted. The fact cannot be lost sight of that State appeals were dismissed on 2-2-1998 after notice to them and the same were dismissed on 2-2-1998 itself in their presence and yet they did not mention on that date that they wanted to file cross-objections or appeals. Thus, the applicants of that case had full opportunity to file their cross-objections or appeal. But they had not filed the same within the time and the time was not meagre one and that was from August 1996 to February 1998. This Court did not find sufficient cause to condone delay. This Court took the decision and rejected the application of the applicant of that case.

7. I have considered the contentions of the learned counsel for the petitioner and perused the materials on the record. The Supreme Court has held that the State cannot be put in the same category. The State has to take decision as to whether any appeal should be preferred against the impugned judgment or order or not.

For that purpose, the process has to be started from the District Court or from the Court concerned to the legal department and after obtaining necessary sanction by the Legal Department the appeal or any legal proceeding should be filed. In the present case, the State has given out reasonable cause and sufficient ground which is sufficient to condone delay of 46 days in filing the appeal. It is true that delay should not be condoned only on the plea that the delay was caused due to administrative reason particularly where there is much delay in filing the appeal or taking legal steps. But the State cannot be expected to explain day today delay as general in the individual case. In the present case, delay occurred is only of 46 days. Under the Law Officers' Rules, the District Government Pleader's Office was required to send the papers along with the opinion and report to the Legal Department and the Legal Department also takes opinion of the Law Officer deputed by them in the Legal Department itself. Thereafter, the files run from one table to another. Ultimately, decision is taken by the authority concerned and then it is returned to the District Government Pleader's Office. In the present case, the opinion for filing the appeal was sent by the letter dated 11-2-1996 which was received by the office of the District Government Pleader on 18-2-1997. No Court can expect that the delay from 11-2-1997 to 18-2-1997 should be explained on the basis of each day. After receiving the opinion on 18-2-1997 there were three working days and it might be some negligence on the part of the office of the District Government Pleader, Junagadh in filing the appeal which could have been filed on 19th, 20th or 21st of February, 1997. But it was filed on 24-2-1997 as 22nd and 23rd of February, 1997 were non-working days. The concerned Asstt. Government Pleader might have been deputed by the District Govt. Pleader to prepare the papers and to draft the memo of appeal and then the appeal was filed on 24-2-1997. In my opinion, explanation given by the State in the application exh. 7 u/s 5 of the Limitation Act was sufficient cause. The District Judge, Junagadh has committed the error in considering the circumstances as not sufficient cause for condoning the delay of 46 days in filing the appeal.

8. If the Courts take strict view in condoning the delay which used to occur in the legal process in the Government Office, then great injustice would be caused to the society at large as the State machinery is not taking process expeditiously or in routine way expected by the general public. We are aware of the fact that the State machinery is not so interested to take action

immediately which may cause injustice to the public at large. Accordingly, in my opinion, the District Judge, Junagadh, has committed grave error which has resulted into miscarriage of justice in rejecting the application for condoning the delay. Thus, the order of the District Judge, Junagadh is liable to be quashed and set aside. In my opinion, the petitioner has explained delay of 46 days satisfactorily and has shown sufficient cause for condoning the delay.

9. Accordingly, this revision application is allowed and the judgment and order dated 7-1998 passed by the learned District Judge, Junagadh dismissing the application exh. 7 filed in Civil Misc. Appeal No. 27/97 is hereby set aside. The District Judge, Junagadh is directed to entertain and decide Civil Misc. Appeal No. 27/97 filed by the petitioner and he shall decide the same in accordance with law. Rule is made absolute, with no order as to costs. Interim relief, if any, stands vacated.

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/JVSatwara/